

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JAN 4 2001

PATRICK FISHER
Clerk

LAWRENCE A. LLOYD, JR.,

Plaintiff-Appellant,

v.

GENERAL MOTORS HOURLY-
RATE EMPLOYEES PENSION
PLAN; GENERAL MOTORS
CORPORATION, a corporation in the
State of Delaware; GENERAL
MOTORS LIFE AND DISABILITY
BENEFITS PROGRAM,

Defendants-Appellees.

No. 00-5148
(D.C. No. 98-CV-87-H)
(N.D. Okla.)

ORDER AND JUDGMENT *

Before **BALDOCK** , **PORFILIO** , and **BRORBY** , Circuit Judges.

After examining the briefs and appellate record, this panel has determined
unanimously that oral argument would not materially assist the determination of

* This order and judgment is not binding precedent, except under the
doctrines of law of the case, res judicata, and collateral estoppel. The court
generally disfavors the citation of orders and judgments; nevertheless, an order
and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Plaintiff-appellant Lawrence A. Lloyd, Jr., sued General Motors Hourly-Rate Employees Pension Plan (Pension Plan), General Motors Life and Disability Benefits Program (Disability Program) and General Motors Corporation claiming that defendants wrongfully denied him benefits under the Pension Plan and the Disability Program. Defendants filed a counterclaim to recover disability benefit overpayments and eventually moved for summary judgment.

After a hearing, the district court orally granted defendant's summary judgment motion based on Mr. Lloyd's failure to exhaust administrative remedies and further found Mr. Lloyd liable for the amount of overpayment demanded in the counterclaim. Mr. Lloyd appeals, and we affirm.

Mr. Lloyd's arguments to this court essentially fall into two categories: complaints about the conduct of the district court and arguments going to the merits of his claims against defendants. With regard to the conduct of the district court, we have reviewed the record with particular attention to the transcript of the summary judgment hearing. That transcript reveals a judge who made every effort to explain things to Mr. Lloyd and to allow Mr. Lloyd to participate in the hearing. The court on two occasions recessed in hopes that the parties could settle, warning Mr. Lloyd of his exposure from the counterclaim if he did not,

explaining that the law and the facts were against him, and urging him to listen to his former attorney. Far from finding any bias or misconduct on the part of the judge, we are impressed with the patience and care with which the court approached this case.

As to Mr. Lloyd's substantive arguments, he cannot prevail here for precisely the reason he failed to prevail in the district court: he has not exhausted the administrative remedies open to him. "Although ERISA contains no explicit exhaustion requirement, we have held that exhaustion of administrative (i.e., company or plan-provided) remedies is an implicit prerequisite to seeking judicial relief." *Whitehead v. Okla. Gas & Elec. Co.*, 187 F.3d 1184, 1190 (10th Cir. 1999) (quotation omitted); *McGraw v. Prudential Ins. Co. of Am.*, 137 F.3d 1253, 1263 (10th Cir. 1998).¹ In regard to Mr. Lloyd's assertion that resort to administrative remedies would have been futile, he points to no evidence in support of this statement and did not make that argument to the district court.

Turning to the judgment against Mr. Lloyd on defendants' counterclaim, we note that the trial judge warned Mr. Lloyd of the risk that he would be held liable

¹ Mr. Lloyd claims the district court "said I could not use the ERISA laws in this case." Appellant's Br. at 2. We find no such statement in the record but do note that the case was docketed in the district court as an ERISA matter and treated as such throughout.

for the amount of the overpayments. When Mr. Lloyd refused to settle, the result was a judgment with which we find no error.

The judgment of the United States District Court for the Northern District of Oklahoma is AFFIRMED.

Entered for the Court

Bobby R. Baldock
Circuit Judge